IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 26TH SEPTEMBER 2006 / 4TH ASWINA 1928

ST.Rev..No. 259 of 2006()

TA.305/2005 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVN. PETITIONER/APPELLANT/ASSESSEE

APPU KURIAN,
P.K.V. TADING COMPANY,
WADAKANCHERRY.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT/ RESPONDENT

STATE OF KERALA, REPRESENTED BY ITS
DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVT. PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 26/09/2006, ALONG WITH S.T.RV. 306/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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exported the same out of India. Section 5A(1)(c) of the Act creates liability for tax on petitioner's purchase. The facts in this case are exactly the same as the facts in **B.M.Ashraf & Co's case.** The scope of liability under Section 5A is considered by this court in detail in the first above referred judgment. Since the decision of this court following the decision of the Supreme Court is squarely against the petitioner, we find no ground to interfere with the Tribunal's order on this issue.

2. The next question raised is with regard to petitioner's liability to interest under Section 23(3A) of the KGST Act. The petitioner, though declared the purchase turnover in the return, did not remit tax, but claimed exemption, which was found incorrect. It is to cover this kind of situation, Section 23(3A) was introduced to the Act providing for interest. We therefore find no ground to interfere with the demand of interest sustained by the Tribunal.

3. Even though petitioner raised a technical ground that the third member to whom descending orders of two other members of the Tribunal are sent, did not hear the petitioner, it is seen that the separate

orders rendered referred to third member contain all the contentions raised by both sides. Therefore it was only a matter of agreeing with one view or other, which is done by the third member. In any case, since the case is decided based on the decision of the Supreme Court, we do not think any purpose will be served by giving one more opportunity of hearing to the petitioner before the third member.

Sales Tax Revision Cases are accordingly dismissed upholding the majority view of the Tribunal.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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W.A. No. OF 200

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JUDGMENT

Dated this the day of February, 200.